

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
In re:

MASTER FILE

REZULIN PRODUCTS LIABILITY LITIGATION  
(MDL No. 1348)

00 Civ. 2843 (LAK)

This Document Relates to: 01 Civ. 0968 (LAK)  
01 Civ. 0969 (LAK)  
01 Civ. 0974 (LAK)  
01 Civ. 0975 (LAK)  
----- x

**PRETRIAL ORDER NO. 17**  
**(Abandonment of Certain Remand Motions)**

LEWIS A. KAPLAN, *District Judge.*

Pretrial Order No. 14, issued April 3, 2001, required counsel for plaintiffs in all cases pending before this Court in which remand or other motions filed in transferor courts at the time the cases were transferred to this Court remain pending to provide this Court with courtesy copies of their motion papers no later than April 24, 2001. It further ordered that “[t]he failure to provide such papers shall be deemed an abandonment of the motion.”

It has come to the Court’s attention that plaintiff’s counsel in four cases pending before this Court in which remand motions were filed in the transferor courts have failed to comply with Pretrial Order No. 14. While such failure cannot be deemed a consent to subject matter jurisdiction or a waiver of defects in subject matter jurisdiction, *see United States v. 27.09 Acres of Land*, 1 F.3d 107, 111 (2d Cir. 1993) (citing *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986)), it may be deemed an admission that the non-diverse plaintiffs in those cases were in fact fraudulently joined, as was argued by defendants in those cases.<sup>1</sup> The implied admission of fact thus renders this Court’s jurisdiction over the actions proper under 28 U.S.C. § 1332. Accordingly, pursuant to Pretrial Order No. 14 and Rule 16 of the Federal Rules of Civil Procedure, the motions to remand in *Halton v. Parke-Davis*, No. 01 Civ. 0968,

---

<sup>1</sup>

*See* No. 01 Civ. 0968, Def. Mem. of Law in Opposition to Pl. Motion to Remand at 2 (filed in N.D. Ga.); No. 01 Civ. 0975, Def. Consolidated Response at 5-6 (filed in N.D. Tex.); No. 01 Civ. 0974, Def. Notice of Removal at 3, 6-7 (filed in S.D. Miss.) (arguing also that plaintiffs’ claims exceed minimum jurisdictional amount); No. 01 Civ. 0969, Def. Mem. of Law in Opposition to Pl. Motion to Remand at 2 (filed in N.D. Ga.).

*Pearce v. Parke-Davis*, No. 01 Civ. 0969, *M.W. Johnson v. Parke-Davis*, No. 01 Civ. 0974, and *Robinson v. Parke-Davis*, No. 01 Civ. 0975 hereby are deemed abandoned.

SO ORDERED.

Dated: April 26, 2001

---

Lewis A. Kaplan  
United States District Judge